

### **REMARKS**

Applicant has carefully considered the rejections made in the Office Action mailed May 29, 2008 (the "Office Action"). Applicant thanks the Examiner for taking the time of a telephonic interview today to listen to Applicant's concerns that the Rein reference does not support a 102 rejection of the present claims.

Claim 1 has been amended to correct a grammatical error, and claim 16 has been amended to have clearer antecedent basis to claim 10. Claims 10 and 12-18 are pending in this application and stand rejected. Applicant respectfully submits that in view of the amendments made, and the remarks that follow, the application is in condition for allowance. Applicant earnestly solicits the Examiner for a Notice of Allowance, or at least a new non-final Office Action, as discussed at the interview.

#### **I. Claims 10, 12-15 and 17-18**

Applicant respectfully traverses the Office Action's rejection of claim 10, 12-15 and 17-18 under 35 U.S.C. § 102(b) as being anticipated by Rein. Unlike the claimed invention and with respect to claims 10, 12-15 and 17, Rein fails to disclose at least "a processing program directly executable by the processing unit" and the "processing program being stored in the command transmitter in a form directly executable by the processing unit." With respect to claim 18, Rein fails to disclose transmitting binary data where the binary data includes "at least one code program directly executable by the processing unit."

Rather, Rein teaches the transmission of mere data from a zone sensor 58 to a control receiver 66. As explained in Rein,

FIG. 6 shows a data packet 86 included in the zone sensor's [58] wireless transmission. This data packet 86 is preferably prefixed by a message type 86T and includes an indication of the zone sensor's identity 86A, the zone sensor's setpoint 86C, 86D, the zone sensor's mode of operation 86E, and the current zone temperature 86B. The zone sensor can also transmit information from the battery level monitor 63 indicating the power level 86F of a battery 59 in the zone sensor 58, and an indication of whether a user has initiated timed override 86G.

(Rein, col. 9, ll. 57-66) (emphasis added).

The data transmitted from the zone sensor 58 to the control receiver 66 in Rein is not a "processing program directly executable by the processing unit." Rather, the data must be

reformatted and manipulated before it can be retransmitted from the control receiver 66 to control a load 406. As explained in Rein,

The central receiver 66 receives the wireless signals from each of a plurality of zone sensors 58 in its receiver portion, 67, reformats those signals in a translator portion 69 of the central receiver 66, and retransmits those signals on a first communication medium TX1.

(Rein, col. 9, ll. 21-25).

Further,

The central receiver 66 receives the transmission on the second communication medium TX2, places the transmissions in the format of the first communications medium TX1, and retransmits the zone sensor information on the first communications medium TX1.

(Rein, col. 12, ll. 54-58).

To further illustrate the difference between a “processing program directly executable by the processing unit” as required by the claims of the subject application and a “data packet” as disclosed in Rein, the definition of an executable program is useful. As defined by the Shorter Oxford English Dictionary, 5th ed., a program is defined as:

a sequence of operations that a machine can be set to perform automatically.

The data packet transmitted in Rein is not a sequence of operations that can be performed automatically because, as explained above, the data must be “reformatted” and “retransmitted.”

The Shorter Oxford English Dictionary, 5th ed., defines executable as:

designating files which can be loaded into memory and executed, i.e. program files as opposed to files containing data.

(emphasis added). The definition of executable clearly states that an executable program as required by the claimed invention is not the same as data files as disclosed in Rein.

For at least these reasons, Rein is quite different and unlike the claimed invention and does not anticipate any of claims 10, 12-15 or 17-18. Therefore, applicant respectfully requests allowance of these claims.

## **II. Claim 16**

Applicant respectfully traverses the Office Action’s rejections of claim 16.

**A. 35 U.S.C. § 112**

The Office Action rejected claim 16 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. Accordingly, applicant has amended claim 16 to contain proper antecedent basis where the antecedent of “the processing program” is found in claim 10. Therefore, applicant respectfully submits that claim 16 is in condition for allowance and respectfully requests allowance of this claim.

**B. 35 U.S.C. § 103**

The Office Action also rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Rein in view of McNair. Applicant respectfully traverses this rejection.

As the Office Action correctly notes on page 6, “Rein et al. did not explicitly disclose wherein the command transmitter includes a two-way transmitter.” However, as discussed above, Rein also fails to disclose at least “a processing program directly executable by the processing unit” and the “processing program being stored in the command transmitter in a form directly executable by the processing unit.”

Rather, as explained above, Rein teaches the transmission of a mere data packet from a zone sensor 58 to a control receiver 66 where the data packet must be reformatted and retransmitted.

Furthermore, McNair does not teach or disclose the deficiencies of Rein as discussed above. Accordingly, neither Rein nor McNair teach, disclose, or suggest each and every limitation of claim 16. Furthermore, it would not have been obvious to one of ordinary skill in the art to modify Rein in view of McNair to make the claimed invention. Therefore, for at least these reasons, applicant respectfully submits that claim 16 is not obvious over Rein in view of McNair and requests allowance of this claim.

**III. Closing Remarks**

For the foregoing reasons, applicant submits that the subject application is in condition for allowance and respectfully requests allowance of the application. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution

hereof, the Examiner is respectfully requested to call the undersigned at the below-listed number.

The Commissioner is hereby authorized to charge any additional fee which may be required for this application under 37 C.F.R. §§ 1.16-1.18, including but not limited to the issue fee, or credit any overpayment, to Deposit Account No. 23-0920. Should no proper amount be enclosed herewith, such as a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 23-0920.

Respectfully submitted,

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By



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